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10/591,247

08/31/2006

James Albert Alexander Campbell

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/591,247 | Applicant(s) CAMPBELL ET AL. | |
| | Examiner MELANIE J. HAND | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/31/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. The election requirement mailed September 24, 2008 is moot in view of applicant's amendment to the claims.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in the United Kingdom on March 1, 2004. It is noted, however, that applicant has not filed a certified copy of the GB 0404603.3 application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on August 31, 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Oath/Declaration

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
It does not identify the citizenship of each inventor.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 24-29 recite structural features recited in independent claim 23, yet the claims do not depend from claim 23. Therefore, claims 24-29 are replete with limitations for which there is insufficient antecedent basis in these claims.

7. Claims 24-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 29 depends from itself and is therefore indefinite. Claims 24-28 depend from claim 29 and therefore are also indefinite. Examiner believes that it is intended that claim 29 depend from independent claim 23 and claims 24-28 depend from claim 29 as they are currently written, and this is the dependency assumed for examination of the claims on the merits herein. Applicant must correct the dependency of the claims in any reply to this Office action.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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9. Claims 23-28 are rejected under 35 U.S.C. 102(a) as being anticipated by Campbell et al (GB 2,384,711 A).

With respect to **claim 23**: Campbell discloses an incontinence device for receiving urine from a user. The device comprises a urine collection bag adapted to fit the groin region of a user (Abstract) inasmuch as the bag is groin-shaped. The urine collection bag has a first compartment for holding urine and a second compartment holding a motor. Examiner's position is based upon the disclosure of a battery operated pump and the fact that, though the pump is not shown, a battery compartment is shown with no additional tubes or connection means is disclosed and therefore the pump/motor must necessarily held in the battery compartment with the battery in the groin bag. The device comprises a urinal (Fig. 2, shown having a vented appendage and motorized system) that has an impeller unit as part of said motorized system (Fig. 9, page 2, all lines). A tube connects the urinal to the first compartment (Fig. 1), and a flexible drive shaft (indicated by dotted lines in phantom in Fig. 2) connects the motor and the impeller unit, wherein the flexible drive shaft is separate from the tube.

With respect to **claim 24**: The tube, in the form of a flexible valve inlet, is detachable from the second compartment inasmuch as the tube, containing a flexible valve inlet, can be disconnected at both ends. (Page 2, ¶1)

With respect to **claim 25**: The urine collection groin bag disclosed by Campbell further comprises a flexible, detachable self-closing outlet.

With respect to **claim 26**: The urinal is a sheath appendage. (Abstract)

With respect to **claim 27**: The urinal disclosed by Campbell further comprises a non-return valve. With respect to the limitation “for retaining urine in a urinal”, the valve prevents fluid collected in the urinal, i.e. the urine, from exiting the urinal, thus it necessarily functions to retain urine in the urinal. (Page 3, ¶6)

With respect to **claim 28**: The urinal further comprises a liquid detector in the form of two or more mesh plates. With regard to the limitation “for controlling the motor”, applicant has not disclosed or recited the structure or means by which the liquid detector controls the motor. Thus, the claim is given its broadest reasonable interpretation. The liquid detector detects the presence or absence of liquid in the urinal and has a warning device. Therefore, it is examiner’s position that it controls the motor indirectly by notifying the caregiver or user who then turns the motor on or off.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claims 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al ('711) in view of Clifton (U.S. Patent No. 6,702,661).

With respect to **claim 23**: Campbell discloses an incontinence device for receiving urine from a user. The device comprises a urine collection bag adapted to fit the groin region of a user (Abstract) inasmuch as the bag is groin-shaped. The urine collection bag has a first compartment for holding urine and a second compartment holding a battery. Examiner's position is based upon the disclosure of a battery operated pump and the fact that, though the pump is not shown, a battery compartment is shown with no additional tubes or connection means is disclosed and therefore the pump/motor is necessarily held in the battery compartment with the battery in the groin bag. The device comprises a urinal (Fig. 2, shown having a vented appendage and motorized system) that has an impeller unit as part of said motorized system (Fig. 9, page 2, all lines). A tube connects the urinal to the first compartment (Fig. 1).

With regard to the limitation "a second compartment holding a motor", while Campbell discloses a battery powered motor in the groin bag, and a battery compartment, Campbell does not explicitly disclose that the battery compartment also holds the motor or any connecting means if the motor is not in the battery compartment. However, a battery cannot sustain a very large or distant motor for as long as it could a motor that is smaller and nearby. Therefore, it would be obvious to one of ordinary skill in the art to modify the device of Campbell such that the motor is also housed in the battery compartment with a reasonable expectation of success to ensure optimal use of the battery's power.

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With regard to the limitation of a flexible drive shaft that connects the motor to the impeller, Campbell implies in Fig. 2, by dotted lines indicating a connection in phantom, that something connects the battery compartment (which possibly contains the motor) with the impeller of the urinal. Campbell does not disclose explicitly what that item in Fig. 2 is. Clifton discloses a compressor having a pump and a motor that is attached to the compressor by a flexible drive shaft and discloses that flexible drive shafts such as that disclosed are known in the art. ('661, Col. 4, lines 43-48, 53-56) Clifton discloses that the purpose of having the motor connected to the compressor in this manner is to provide power to induce air circulation when the means for doing so has just been turned on and not heated up yet. This would be beneficial in the urinal of Campbell because the impeller would immediately pump urine even if it the impeller just been turned on so that overflow or leakage does not occur from the urinal. Drive shafts are an effective means of transferring torque and rotation between components that are too far apart to be connected directly or that need to be allowed to move relative to one another, as would be the case in the urinal impeller and motor disclosed by Campbell. Therefore, while Campbell does not explicitly disclose that the item in Fig. 2 is a drive shaft, it would be obvious to one of ordinary skill in the art to modify the device of Campbell such that a flexible drive shaft (allowing the relative motion of the urinal and groin bag mentioned) separate from the tube that connects the bag and urinal to convey urine connects the impeller and motor as disclosed by Clifton with a reasonable expectation of success to allow transfer of power between the motor and impeller to save battery power while allowing the user to still move freely.

With respect to **claim 24**: The tube disclosed by Campbell, in the form of a flexible valve inlet, is detachable from the second compartment inasmuch as the tube, containing a flexible valve inlet, can be disconnected at both ends. (Page 2, ¶1)

With respect to **claim 25**: The urine collection groin bag disclosed by Campbell further comprises a flexible, detachable self-closing outlet.

With respect to **claim 26**: The urinal disclosed by Campbell is a sheath appendage. (Abstract)

With respect to **claim 27**: The urinal disclosed by Campbell further comprises a non-return valve. With respect to the limitation “for retaining urine in a urinal”, the valve prevents fluid collected in the urinal, i.e. the urine, from exiting the urinal, thus it necessarily functions to retain urine in the urinal. (Page 3, ¶6)

With respect to **claim 28**: The urinal further comprises a liquid detector in the form of two or more mesh plates. With regard to the limitation “for controlling the motor”, applicant has not disclosed or recited the structure or means by which the liquid detector controls the motor. Thus, the claim is given its broadest reasonable interpretation. The liquid detector detects the presence or absence of liquid in the urinal and has a warning device. Therefore, it is examiner’s position that it controls the motor indirectly by notifying the caregiver or user who then turns the motor on or off.

13. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell in view of Swinn (U.S. Patent No. 3,032,038).

With respect to **claim 29**: Campbell does not disclose that the urinal has straps for fastening the urinal to a belt. Swinn discloses a male urinal having straps 6 for attaching a urinal in the form of tubular member 10 to a belt 5. Swinn discloses that the straps allow for optimal location of the

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urinal and retention of said urinal in place irrespective of the movement of the user's torso or legs. ('038, Col. 2, lines 27-36) Therefore, it would be obvious to one of ordinary skill in the art to modify the device of Campbell such that the urinal has straps for attaching to a belt as disclosed by Swinn to allow retention and optimal positioning of the urinal regardless of movement by the user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

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